

VIA ECF

January 8, 2021

The Honorable Debra Freeman
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *E.G., et. al. v. City of New York, et al.*, No. 20-cv-9879 (AJN)

Dear Judge Freeman:

On behalf of the parties in the above-referenced matter, attached please find a proposed scheduling order for the Court's review. The parties have negotiated the dates in the proposed order assuming that Judge Nathan will be available to hold the hearing beginning on February 24, 2021. The parties were able to agree on all aspects of the scheduling order, with one exception, as set forth in the following respective statements of the parties:

Defendants' Position: Defendants believe that a limit on the number of fact witnesses the parties are permitted to call at the hearing should be inserted into the scheduling order. Defendants believe that in an evidentiary hearing that is only intended to resolve facts necessary for the adjudication of a preliminary injunction motion, an unlimited number of fact witnesses is unreasonable. Plaintiffs appeared to recognize this and originally proposed a limit of 10 fact witnesses but now take the view that there should be no limit. Defendants' original proposal was to exchange preliminary witness lists on January 22, limited to 10 potential fact witnesses, and final witness lists on Feb. 12, limited to 6 fact witnesses. Defendants were willing to accept 8 witnesses on the final list and also proposed that additional fact witnesses could be added after the exchange of final witness lists with leave of Court. We think Defendants' proposal is a reasonable limitation and ask that the Court include it in the scheduling order.

Plaintiffs' Position: Plaintiffs believe that it is inappropriate to insert into the scheduling order a limit on the number of fact witnesses that the parties may call at the evidentiary hearing. Defendants' attempt to cabin Plaintiffs' evidentiary presentation is unwarranted. Plaintiffs intend to make every effort to be streamlined in their evidentiary presentation at the hearing. However, Plaintiffs are not in a position to limit themselves to a specific number of fact witnesses, particularly at this early stage when Plaintiffs are actively developing their case and before any fact discovery has occurred.

The parties are available at the Court's convenience to address any questions regarding the issues addressed in this joint letter.

Respectfully submitted,

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